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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



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| In the Matter of | ) | |
| | ) | |
| Implementation of Section 402(b)(1)(A) | ) | CC Docket No. 96-187 |
| of the Telecommunications Act of 1996 | ) | |
| | ) | |

# REPLY COMMENTS OF PACIFIC TELESIS GROUP

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## SUMMARY

In spite of the plain language of §204(a)(3) and Congress's "pro-competitive, deregulatory" goals, some competitors encourage the Commission to move backward from streamlining the LEC tariff process. The Commission should reject these proposals and move forward as Congress intended and the public interest demands.

Some competitors incorrectly assert that §203(a)(3) creates merely a presumption of lawfulness for LEC rates. Actually, Congress intended for "deemed lawful" to establish the lawful rate. Section 204(a)(3) states, "Any such charge, classification, regulation or practice *shall be deemed lawful...after the date on which it is filed* with the Commission....." (emphasis added) There is no ambiguity in this language. "Deemed" should be given the same meaning it has elsewhere in the Communications Act, namely, "to be treated, by operation of law, as." Thus, LEC tariffs are to be treated, by operation of law, as lawful when they are filed.

Contrary to assertions by AT&T (pp. 2-4), the Commission correctly concluded that "Congress intended to foreclose Commission exercise of its general authority under §203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days' notice." *NPRM*, para. 6. There is no other reasonable way to read the statute. The specific streamlined filing requirements of §204(a)(3) supersede the general 120 day notice period in §203(b)(1). AT&T's contrary interpretation would eviscerate §204(a)(3).

ALTS (p. 4) recognizes that the first sentence of §204(a)(3) involves terms and conditions other than rates and says that it "raises a question as to whether changes in terms and conditions are eligible for streamlined treatment." Actually, the language is clear. In the first sentence, Congress stated that LECs may file "a new or revised charge, classification, regulation, or practice on a streamlined basis." (emphasis added) Ad Hoc (p. 4) correctly acknowledges the obvious when it states that "[t]his language contemplates eligible revisions that are much broader than merely increases and decreases in rates."

Ad Hoc (p. 4) and ALTS (p. 6) incorrectly assert that the Commission should exclude new services from the streamlining provisions of §204(a)(3) because of the need for "more in-depth consideration" than with other changes. More in depth consideration will simply delay the bringing of new services to customers. This delay may benefit some competitors of the incumbent LECs, but benefiting certain competitors is not a legitimate goal. Rapid provision of new services is at the heart of Congress's "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans...." *NPRM*, para. 1 (emphasis added)

ALTS (p. 5) states that "it would make no sense to allow tariffs that require a waiver of any Commission rule or Order to become effective under the streamlined process unless a waiver has been granted before the filing of the tariff." ALTS has it backwards. The Commission's Rules and Orders cannot take precedence over the streamlining provisions of the 1996 Act. Conflicting regulations must be removed.

Many of the proposals to move backward from tariff streamlining would directly lengthen the notice periods for incumbent LECs, slowing down their ability to respond to competition and providing the LECs' competitors with advance information that would permit them to easily stay one step ahead of the LECs in changing prices or terms and conditions. Many other proposals to move backward attempt to add to the burdens of LEC tariff filings in ways that would reduce the LECs' efficiency and ability to compete.

We urge the Commission to reject these proposals to move backward from streamlining of the LEC tariffing process. The Commission should implement §204(a)(3) as Congress intended in order to achieve its "pro-competitive, deregulatory" goal of bringing more and better services to the American public at lower prices as quickly as possible. Regulations that create unnecessary delays or that are more burdensome than those specifically required in the 1996 Act would be contrary to that goal.

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**REPLY COMMENTS OF PACIFIC TELESIS GROUP**

Pacific Telesis Group ("PTG") hereby respectfully submits these Reply Comments in the above-captioned proceeding.

## I. Introduction

The Telecommunications Act of 1996 was passed to enact serious reform. Congress determined that competition, not burdensome government regulation, is the key to increasing the benefits of telecommunications services for the public. Thus, to foster vigorous competition in the industry, Congress amended several key provisions of the 1934 Act, significantly streamlining Commission regulations. Most notably, Congress amended § 204 in order to further Congress's "pro-competitive, deregulatory" goals.[1]

Section 204(a)(3) was intended to make meaningful reforms in tariff filing proceedings.[2] By shortening the tariff filing period, §204(a)(3) eliminates unnecessary delays in

[1] Congress amended Section 204(a)(2)(A) to require the Commission to conclude any investigatory proceedings of the tariffs within five months after their effective date. Congress also amended §204(a)(3) requiring LEC tariff filings to become the lawful and effective rate after a 7 or 15-day period.

[2] There is much support for this assertion. *See, e.g.,* GTE at 2; BellSouth at 3; Bell Atlantic at 1; NYNEX at 3; USTA at 1.

the tariff review and approval process. LECs no longer have to wait 45, 90, or even 120 days for approval of their tariff filings. Under §204(a)(3), tariffs will become effective 7 or 15 days after filing, unless suspended. LECs will be better able to respond to competition, bringing more efficient and new services more rapidly to the public.

In spite of the language of §204(a)(3) and Congress's goals, some parties who compete with incumbent LECs support proposals that would move backward from streamlining LEC tariffs. These parties would distort the section so that tariffs that Congress "deemed lawful" would be merely presumed lawful, rather than treated by operation of law as lawful. Contrary to the streamlining provisions of §204(a)(3), they would have LEC tariffs deferred for up to 120 days. Tariff changes that did not affect rates and tariffs for new services would be further delayed without justification. Congress's intent to reduce notice periods would be blocked by the archaic need to obtain Part 69 waivers and special permission under Part 61. Congress's general grant of forbearance authority would be denied solely to incumbent LECs. Advance notice of LEC tariff filings would be required prior to statutory notice. This would delay LEC tariff filings, while only preserving the fiction of meeting the notice periods established by Congress. In the guise of streamlining, LECs (or at least incumbent LECs) would be required to make more detailed tariff filings than they make today.

These competitors are attempting to stand §204(a)(3) on its head and use it as a vehicle to encumber, rather than to streamline, the incumbent LECs' tariffing procedures. Where the statutory language is clear, they ignore its plain meaning. Where there is ambiguity, they propose interpretations contrary to streamlining that would ensure them a competitive advantage over incumbent LECs. The Commission must reject these ploys and implement §204(a)(3) as Congress intended, in order to achieve its "pro-competitive, deregulatory" goal of bringing more and better services to the American public at lower prices as quickly as possible.

## II. The Commission Should Reject Proposals That Would Frustrate Congress's Intent To Substantially Change The Current Regulatory Treatment Of LEC Tariff Filings Via Section 204(a)(3) (¶¶ 5-15)

### A. *The Commission Should Reject Arguments That §204(a)(3) Creates Merely A Presumption Of Lawfulness*

Some competitors incorrectly assert that §203(a)(3) creates merely a presumption of lawfulness for LEC rates.[3] Congress clearly did not intend for "deemed lawful" to create merely a presumption of lawfulness. If it had, it would have said so. The terms "deemed" and "presumed" are not synonymous. "Deem" is defined as "[t]o hold; consider; adjudge; believe; condemn; determine; treat as if; construe."[4] "Presume," means "[t]o assume beforehand. ... to believe or accept upon probable evidence."[5] "Presumed" does not constitute a determination of legality. It merely shifts the burden of proof in a tariff investigation. If Congress had intended only to create a presumption of lawfulness for LEC tariff filings, and not a determination of lawfulness, it would have used "presumed lawful" in §204(a)(3), but it did not do so.[6]

Actually, Congress intended for "deemed lawful" to establish the lawful rate. Section 204(a)(3) states, "Any such charge, classification, regulation or practice *shall be deemed lawful. . . after the date on which it is filed* with the Commission....."[7] There is no ambiguity in this language. "Deemed" should be given the same meaning it has elsewhere in the Communications Act, namely, "to be treated, by operation of law, as."[8] Thus, LEC tariffs are to be treated, by operation of law, as lawful when they are filed. This treatment will provide certainty as to the status of LEC tariff filings so that LECs can vigorously compete the same as

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[3] *See , e.g.,* Ad Hoc at 2-3; AT&T at 4-7; Frontier at 2; Sprint at 2-5; and TRA at 3.

[4] BLACK'S LAW DICTIONARY 415 (6th ed. 1990).

[5] *Id.* 1185.

[6] Although Frontier (p. 6) states that "deemed lawful" creates a presumption of lawfulness, it actually seeks presumptions against some LEC tariff filings even after they are effective. Frontier (p. 6) states that "the Commission should establish a conclusive presumption that out-of-band or above-cap filings that are ultimately rejected will be met with substantial monetary forfeitures." There would be no legal basis for this presumption or forfeiture.

[7] 47 U.S.C. § 204(a)(3) (emphasis added).

[8] *See* PTG Comments at 3.

other competitors. LECs will no longer fear being retroactively penalized for charging a rate which was a reasonable response to market conditions. Such assurance will benefit consumers because LECs will be encouraged to vigorously compete and to offer new services.

### *B. The Commission Should Reject Arguments Aimed At Eviscerating Section 204(a)(3) By Deferring LEC Tariffs*

Contrary to assertions by AT&T (pp. 2-4), the Commission correctly concluded that "Congress intended to foreclose Commission exercise of its general authority under §203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days' notice." *NPRM*, para. 6. As MCI (p. 2) points out concerning §204(a)(3), "the 'shall be effective...unless the Commission takes action under paragraph (1)' language forecloses exercise of the 203(b)(2) deferral authority."[9] There is no other reasonable way to read the statute. The streamlined filing requirements of §204(a)(3) supersede the 120 day notice period in §203(b)(1) and the Commission's authority to reduce that notice period in §203(b)(2).

AT&T (pp. 1-4) argues that §402(b)(1)(A) of the Telecommunications Act of 1996 amends only §204, not §203. This reasoning is specious. While §402(b)(1)(A) may have added words only to §204, those words can, and do, affect the applicability of other sections of the Act. Congress was very clear that it wanted streamlined filings in the context of deregulatory legislation. First, §203(b)(2) by its own terms allows modification only of "any requirement made by or under the authority of this section," namely §203. (emphasis added) The provision has no relevance to, and cannot allow modification of, §204. It is inconceivable that Congress would have intended to allow the Commission to undo Congress's streamlining requirement without having explicitly said so, which it did not. Second, the obvious intent of §203(b)(2) is to allow the Commission to create only *shorter* notice periods than those provided by statute. It relates to §203(b)(1), which requires a 120 day notice, and allows the Commission to change that

[9] MCI (p. 3) incorrectly concludes that this foreclosure applies only to changes in rates. *See* Part III A below.

period, but not to greater than 120 days. Relying on this provision to *lengthen* the notice period in another subsection would pervert the provision's purpose.

### *C. The Commission Should Reject MCI's Suggestion That Interpreting "Deemed Lawful" As Establishing The Lawful Rate Will Create Unnecessary Judicial Review Of A Commission Decision Not To Suspend*

MCI (pp. 6-8) incorrectly suggests that interpreting "deemed lawful" as establishing the lawful rate will create unnecessary judicial review. Actually, Congress did not intend for the Commission's failure to act in a streamlined tariff proceeding to be subject to judicial review. First, Congress, not the Commission, determined that LEC tariff filings are lawful when filed. Section 204(a)(3) gave the Commission discretionary power to suspend a proposed tariff which appears unreasonable during the streamlined period. Congress did not require the Commission to make any decision, let alone a final decision as to the lawfulness of a rate. Where the Commission does not act, a LEC tariff filing establishes the lawful rate until the Commission makes a later finding to the contrary.

Second, a discretionary decision not to act is not equivalent to a final agency decision. Seven or 15 days often would be insufficient for the Commission to make a final decision as to the lawfulness of a proposed rate. Such a final determination would often require significant review and investigation. To allow courts to review a Commission decision not to investigate a proposed tariff would usurp the Commission's authority to review rates under §§204, 205, and 208. Thus, judicial review would result in an adjudication of the lawfulness of rates prior to an agency determination of lawfulness. Accordingly, a Commission decision not to act in a §204(a)(3) proceeding remains non-reviewable.

This conclusion is clearly in line with Supreme Court precedent. In *Southern Railway*,[10] the Court held that the ICC's decision not to investigate a proposed rate was non-reviewable because Congress did not intend to permit judicial review of "no investigation"

[10] *Southern Railway Company v. Seaboard Allied Mining Corp.*, 442 U.S. 444 (1979).

decisions.[11] Specifically, the Court said that if Congress wanted the ICC to investigate the lawfulness of proposed tariffs, it would have mandated this duty, not given the ICC discretionary review.[12] A discretionary decision not to investigate was not equivalent to a final decision as to the lawfulness of a proposed tariff. Further, the Court held that aggrieved parties could seek relief through other available complaint proceedings.

Similarly, in §204(a)(3), Congress gave the Commission discretion to investigate a LEC tariff filing during the pre-effective period. Where the Commission declines to act, the filed tariff rate simply becomes the lawful rate until the Commission determines otherwise. The decision not to suspend the tariff is not a final agency decision. Thus, the courts have nothing to review. Congress clearly believed that competition would require LECs to charge reasonable rates. That is why Congress mandated that LEC tariff filings be deemed lawful when filed.

Even if the Commission interprets *Southern Railway*, and its progeny,[13] to mean that an agency decision not to suspend is non-reviewable only where complaint proceedings are available, this requirement is satisfied under §204(a)(3). Interpreting "deemed lawful" as establishing the lawful rate will not foreclose a complaint remedy because aggrieved parties can still obtain relief via a §205 or 208 proceeding. The fact that such a party can only be entitled to prospective relief is immaterial to the availability of judicial review. Because rates are, by act of Congress, lawful until the Commission makes a contrary prospective finding, a complainant has 1) no legal right to retrospective damages and 2) no right to judicial review before an affirmative and final action by the Commission.

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[11] *Id.* at 455-457 (stating that the language, structure and history of the Act suggest that Congress intended to prohibit judicial review of "no investigation" decisions).

[12] *Id.* at 456.

[13] *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221, 1235 (D.C. Cir. 1980)(stating "[In *Southern Railway*], [t]he Court held the ICC actions to be non-final and unreviewable because the complaint procedure of the Interstate Commerce Act. . . would still be available to 'protect persons aggrieved by the rates.'")

### *D. The Commission Should Reject Shopworn Arguments Designed To Prevent Marketplace Competition*

Contrary to statements by ALTS (p. 4), the marketplace will ensure that rates are reasonable. LECs no longer have a monopoly on telecommunications services. There are numerous competitors in the market, and increasing numbers of new entrants are anticipated. Consumers now have choices. In this competitive environment, the marketplace, not regulation, will drive prices. Congress's inclusion of "deemed lawful" in §204(a)(3) demonstrates its reliance on market forces, rather than regulation to set prices. Thus, competitors' stated concerns that LECs will charge unreasonable rates are unfounded. Market forces, together with price caps, will prevent this occurrence.

Moreover, Congress left adequate safeguards in place to ensure that LEC abuse does not occur. In addition to market forces regulating rates, Congress has empowered the Commission to engage in pre- and post-effective review.[14] The 7 or 15-day period is sufficient for the Commission to discover, and suspend and begin to investigate, rates blatantly unreasonable. In addition, the Commission can conduct post-effective review of tariffs in a §205 or 208 proceeding. Such safeguards, coupled with market forces, ensure that LECs charge consumers reasonable rates.

## III. The Commission Should Reject Proposals That Would Limit Tariff Streamlining To Rate Decreases And Increases (¶¶ 16-19)

### *A. The Commission Should Reject Arguments That Revisions To Terms and Conditions Other Than Rates Are Not Subject To Streamlining (¶¶16-17)*

ALTS (p. 4) recognizes that the first sentence of §204(a)(3) involves terms and conditions other than rates and says that it "raises a question as to whether changes in terms and conditions are eligible for streamlined treatment." Actually, the language is clear. In the first sentence, Congress stated that LECs may file "a new or revised charge, classification, regulation,

[14] 47 U.S.C. §§ 204(a), 205(a), 208(a).

or practice on a streamlined basis." (emphasis added) Ad Hoc (p. 4) correctly acknowledges the obvious when it states that "[t]his language contemplates eligible revisions that are much broader than merely increases and decreases in rates." Similarly, MFS (p. 4) correctly states, "The Commission can and should adopt streamlined procedures as directed by the 1996 Act for LEC tariff filings that include revised classifications, regulations or practices."

Nonetheless, ALTS (p. 4-5) concludes that the second sentence of §204(a)(3) "clearly indicates that Congress contemplated streamlined filings only for changes that raise or lower rates." ALTS is attempting to read the first sentence out of the statute. This cannot be done. This reading would be contrary to the well-established rule of statutory construction that every legislative provision is presumed to have independent meaning and effect.[15]

Similarly, MCI (pp. 14-15) illogically states, "The Commission's desire to 'simplify' the LEC tariffing process is not sufficient grounds for relaxing its scrutiny of changes to LEC tariffs' terms and conditions." MCI, too, is ignoring the words of the statute. It is not merely the Commission's desire to simplify the process that is at stake. Congress mandated the streamlining of this process, thereby requiring the Commission's simplification of it.

Time Warner (p. 6) incorrectly states, without explanation, that §204(a)(3) is ambiguous regarding whether streamlining applies "to all LEC tariff filings, or only to those which involve rate increases or decreases for existing LEC services." Time Warner concludes that the Commission should find in favor of the latter interpretation. But the language applying streamlining to a "new or revised charge, classification, regulation, or practice" on its face clearly applies to more than revisions to charges. That is not open to interpretation. The U.S. Supreme Court stated, "If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[16]

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[15] *See, e.g., National Insulation Transportation Committee v. ICC*, 683 F. 2nd 533, 537 (D.C. Cir. 1982) ("court must, if possible, give effect to every phrase of a statute so that no part is rendered superfluous").

[16] *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843-45 (1984).

Time Warner (p. 6) correctly states that "the Commission should remain mindful of the overall purpose of the 1996 Act: to establish a 'pro-competitive, deregulatory national policy framework for the telecommunications industry.'" But Time Warner (pp. 6-7) is mistaken in concluding that this means the Commission should "limit the scope of Section 204(a)(3)" in order to hold back incumbent LECs and protect their competitors. If Congress wanted to hold back incumbent LECs, it would not have mandated the streamlining of the tariff process for all LECs. The section makes no distinction between types of LECs and is aimed at allowing all LECs an equal opportunity to compete.

In addition, Time Warner (p. 7) distorts Congressional intent by asserting that the Commission should limit tariff streamlining for incumbent LECs in order to ensure that they meet their §251 obligations by providing services and facilities through their federally tariffed services. Thus, Time Warner wants the Commission to use §204(a)(3) to constrain the LECs. This would stand the section on its head and make it work the opposite of Congress's intent that it provide "regulatory relief" that streamlines procedures. Time Warner's argument also is without merit because the incumbent LECs' §251 obligations are carried out through a negotiation and State arbitration process set forth in §252, not by federal tariff requirements. Thus, the sole basis for Time Warner's position is incorrect, and that position must be rejected. The Commission's tentative conclusion is correct that "all LEC tariff filings that involve changes to the rates, terms and conditions of existing service offerings are eligible for streamlined treatment." *NPRM*, para. 17.

### *B. The Commission Should Reject Arguments That Tariff Revisions That Do Not Change Rates Require More Than A 7 Day Notice Period (¶¶16-17)*

ALTS (p. 5) states that the Commission should "not allow changes in the terms and conditions of a tariff offering to become effective as quickly as changes in rates." ALTS gives two unsupported and illogical reasons for this conclusion. First, ALTS states, "Presumably, most charges [sic] in rates would be within-band and thus relatively routine and in

need of less scrutiny." Congress did not limit the effective dates in §204(a)(3) to revisions within price cap constraints. To have done so would have been illogical since price cap LECs already can make such revisions on 14-days notice, and the new 15-day notice period for rate increases would be a step backward from streamlining.

Second, ALTS states, "On the other hand, changes in terms and conditions are more likely to involve issues of competitive and consumer harm." This unexplained statement also makes no sense. Where there is no rate increase, it is inconceivable that Congress would be more concerned about review of the filing than where there is a rate increase. Congress mentioned rate increases and decreases because that is where its concern lay. Where there is no change in rates, there would logically be less concern than with a rate increase. Accordingly, the Commission should apply the 7-day notice period to these filings.

For the same reasons, AT&T's (p. 10) proposal is without merit that LEC tariff filings that seek to make changes, other than rate increases or decreases, to the terms and conditions of existing services should be made "30 days prior to a tariff's proposed effective date." There is no basis for AT&T's 30-days notice recommendation.

MFS (p. 4) states that the established notice periods should not apply to LEC tariff filings that do not decrease or increase rates until "competitors serve at least one-third of the U.S. local service customers." MFS (p. 4-5) clarifies that it is really talking about only restraining the incumbent LECs, not other LECs such as itself. There is no basis in §204(a)(3) or the 1996 Act as a whole for MFS's proposed competition test. MFS's proposal would work against the regulatory relief that Congress intended to promote competition. There also is no basis in §204(a)(3) for treating incumbent LECs differently than other LECs. If Congress wanted differential treatment it would have said so. Accordingly, MFS's proposal must be rejected.

### C. *The Commission Should Reject Arguments That Streamlined Treatment Should Not Be Applied To New Services (¶18)*

Some competitors argue that §204(a)(3) tariff streamlining does not apply to new services. ALTS (p. 6), MCI (p. 15), and Sprint (p. 4) draw this conclusion by totally ignoring the first sentence of §204(a)(3). As discussed in Section A above, a statute cannot be interpreted by leaving out any of its provisions.

TRA (p. 8) states that the first sentence does not use the words "new or revised services" and thus does not include them. TRA does not explain how the broad language of the first sentence, which includes "a new or revised charge, classification, regulation, or practice," could not include, new or revised services. It plainly does. Moreover, §204(a)(1) uses the identical broad language and treats "a charge for a new service" as a subset of the broad language.

CompTel (p. 4) states that the use of the singular, rather than plural, in the broad language of the first sentence "suggests that revisions to existing tariffs are covered but not new tariffs for new services." This argument is illogical since a new service is as singular as any other new practice. Moreover, what Congress applies to one applies to more than one. In fact in its Joint Explanatory Statement, Congress used the plural when it stated that this section streamlines the procedures for revision by LECs "of charges, classifications and practices under section 204 of the Communications Act."[17] Ad Hoc (p. 4) and Sprint (p. 5) make a similarly illogical point in support of excluding new services from tariff streamlining. They inexplicably assert that adding a new service is not included in the LEC revisions, including revisions to practices, referred to in the legislative history. Again, this is clearly wrong.

Ad Hoc (p. 4) and ALTS (p. 6) assert that the Commission should exclude new services because of the need for "more in-depth consideration" and because they "raise many more questions" than with other changes. More in depth consideration will simply delay the bringing of new services to customers. This delay may benefit some competitors of the

[17] Telecommunications Act of 1996, Conference Report, January 31, 1996, Joint Explanatory Statement Of The Committee Of Conference, p. 186.

incumbent LECs, but benefiting certain competitors is not a legitimate goal.[18] No party has identified any public interest that can be harmed by the offering of a new service. On the one hand, if customers do not want the service, they can simply not buy it. On the other hand, if the service meets customers needs, the public and our economy are better off. The sooner new services get into the market, the sooner consumers will benefit. Rapid provision of new services is at the heart of Congress's "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans...." *NPRM*, para. 1 (emphasis added)

### *D. The Commission Should Reject Arguments That Part 61 And Part 69 Requirements Stand In The Way Of The 7-Day And 15-Day Notice Periods (¶¶ 16-18)*

ALTS (p. 5) states that "it would make no sense to allow tariffs that require a waiver of any Commission rule or Order to become effective under the streamlined process unless a waiver has been granted before the filing of the tariff." ALTS has it backwards. The Commission's Rules and Orders cannot take precedence over the streamlining provisions of the 1996 Act. Conflicting regulations must be removed.

Accordingly, Bell Atlantic (p. 3) and GTE (p. 8) are correct that the Part 69 waiver process, which prevents new switched access tariffs from going into effect within the prescribed 7 or 14-day period, must be eliminated as contrary to the statute. Similarly, GTE (p. 24) is correct that Part 61 special permission rules that conflict with the provisions of §204(a)(3) must be eliminated.

### *E. The Commission Should Reject Arguments That § 204(a)(3) Precludes The Commission From Establishing Permissive Detariffing (¶ 19)*

CompTel (p. 5) incorrectly asserts that the general ability of the Commission to forbear under §10(a) is "overridden...by the specific language of new Section 204(a)(3), which requires tariff filings." CompTel's interpretation would render §10(a) meaningless. Section

[18] *See FCC v. RCA Communications, Inc.*, 346 U.S. 86, 94-5 (1953); *Hawaiian telephone Company v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974).

10(a) states that, if it makes certain findings, "the Commission shall forbear from applying any regulation or any provision of this Act...." The regulations and provisions of the Act are, of course, always more specific than the general forbearance authority, and thus CompTel's reasoning would prohibit any use of §10(a). The rule of construction urged by CompTel (that the specific governs over the general), however, only applies where there is conflict between the specific language and the general language. Here there is no conflict. The general forbearance provision is designed to allow forbearance of specific requirements if the Commission makes certain findings. In addition to being contrary to the plain meaning and purpose of §10(a), CompTel's interpretation would be contrary to the rule of statutory construction that every legislative provision is presumed to have independent meaning and effect.[19]

Unlike CompTel, TRA (p. 8) correctly agrees with the *Notice* that §204(a)(3) "does not restrict the Commission's forbearance authority." TRA, however, incorrectly states that "further relaxation of LEC tariffing requirements for at least ILECs possessed of huge market shares could not be justified under §10(a)...." Contrary to TRA's implication, in order to support Congress's "pro-competitive, deregulatory goals," whatever forbearance the Commission adopts concerning §204(a)(3) should apply to all LECs equally. Congress did not distinguish between incumbent LECs and other LECs in this section, and neither should the Commission. Contrary to TRA's statement, the competitive nature of today's telecommunications market makes incumbent LECs prime candidates for permissive forbearance.

[19] *See, e.g., National Insulation Transportation Committee v. ICC*, 683 F. 2nd 533, 537 (D.C. Cir. 1982) ("court must, if possible, give effect to every phrase of a statute so that no part is rendered superfluous").

## IV. The Commission Should Adopt Proposals Consistent With Streamlining The Administration Of LEC Tariffs And Reject Proposals That Would Move Backward From Streamlining (¶¶ 20-34)

### *A. The Commission Should Adopt Proposals To Use An Industry Forum To Develop Standards For The Electronic Filing Of Tariffs (¶¶21-22)*

The comments reflect widespread support for moving toward the filing of tariffs electronically, by use of the Internet. We support the comments of BellSouth, CITI, GTE, NYNEX, Sprint, and US West that urge the creation of uniform standards and guidelines for these electronic filings. These standards and guidelines would need to embrace security,[20] posting and notification,[21] backup,[22] Internet document formatting,[23] and operating platforms.[24] Moreover, we agree that an industry forum would provide an excellent vehicle for setting such standards.[25] We believe that this approach will help streamline the tariff process and bring efficiency benefits to the industry, the Commission, and the public.

### *B. The Commission Should Provide E-Mail Notice Of Tariff Filings (¶26)*

Ad Hoc (p. 7) states, "Carriers should be required to serve tariff revisions by email (to those persons who have indicated that they wish to receive carrier tariff revisions via email)." This approach of each carrier having to personally provide e-mail notification would be inefficient and unnecessarily burdensome. Instead, the Commission "should, as a convenience to interested parties, maintain a list of interested parties and provide affirmative notice to them by e-mail when a LEC tariff is filed." NPRM para. 26.

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[20] *See, e.g.*, BellSouth at 9-10 and CITI at 2 & 4.
[21] *See, e.g.*, BellSouth at 10.
[22] *See, e.g.*, US West at 13.
[23] *See, e.g.*, BellSouth at 9-10 and CITI at 4-5.
[24] See, e.g., BellSouth at 9-10, CITI at 4, and US West at 13.
[25] See, e.g., BellSouth at 10, CITI at 2, GTE at 21-22, NYNEX at 18, and Sprint at 5-6.

### *C. The Commission Should Reject Various Proposals To Move Backward (¶¶ 25-29)*

#### *1. The Commission Should Reject Proposals To Extend Notice Periods (¶¶ 25-29)*

Many of the proposals to move backward from streamlining would directly lengthen the notice periods for LECs, slowing down their ability to respond to competition and providing their competitors with advance information that would permit them to easily stay one step ahead of the LECs in changing their own prices or terms and conditions.

AT&T (p. 12) suggests that the Commission automatically defer up to 120 days certain categories of LEC tariffs. As we explained in Part II B above, the Commission may not defer streamlined LEC tariffs under §203(b)(2). This proposal would eviscerate Congress's streamlining provisions in §204(a)(3).

MCI attempts to frustrate LEC competition via the Commission's e-mail notification proposal. MCI (p. 21) states that LECs should have to give 7 days advance e-mail notice before filing tariff transmittals with the Commission. This proposal would effectively extend the notice period to 14 days for rate decreases and 22 days for rate increases, directly in conflict with Congress's established notice periods in §204(a)(3).

Even more outrageous is MFS's (p. 10) proposal that incumbent LECs be required to provide 30 days notice in advance of the 7 or 15 days notice that Congress established. This proposal not only would violate the statutory notice periods, but also would violate Congress's mandate that streamlining applies to all LECs.

Similarly, AT&T (pp. 17-18) urges the Commission to require "LECs to file [tariff review plan] materials 90 days prior to the effective date of their annual access tariffs" and to "provide TRPs and cost support data at least 30 days in advance of any mid-term change to their price cap indices...." CompTel (p. 7) also supports this "prior notice." Requiring prior notice conflicts with the prescribed notice periods of §204(a)(3) and Congress's streamlining intent. Moreover, as Sprint (p. 8) explains, early filing would not provide information of any

legitimate assistance to the tariff review process and would require the LECs to produce TRPs twice, once for the early filing and once to reflect changes for the final filing.[26]

Frontier proposes a "bifurcated procedure" that would blatantly violate §204(a)(3). Frontier (p. 7) states, "The first phase would consist of objections akin to petitions to reject or suspend with petitions due twenty-five days after the filing of the affected tariff, oppositions due fourteen days thereafter and replies due after an additional ten days."[27] Unlike the other proposals, Frontier's does not even pretend to come within the 7 or 15 day notice periods that Congress established in §204(a)(3), and creates additional time for what is, in effect, surreplies. This proposal clearly must be rejected.

Other backward proposals attempt more subtly to lengthen the LEC notice periods. Both Ad Hoc (p. 8) and MCI (p. 20) assert that tariffs containing both rate element decreases and increases should be subject to the 15 day notice period. This approach would be contrary to Congress's intent. Where the net effect of both rate element decreases and increases would be a decrease, this approach would needlessly delay bringing the benefit of that price decrease to customers and would harm the LEC's ability to compete. Moreover, it would be a step backward from current price cap regulation which allows 14 days notice for in band filings, without constraints based on individual rate elements. Accordingly, Southwestern Bell (p. 15) is

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[26] Sprint (p. 9) errs, however, in its suggestion that the Commission "require the LECs to file their exogenous cost changes and PCI development fifteen days prior to the filing of the Annual Access Tariff." This early filing would suffer from the same defects as those identified by Sprint for other early filings. For instance, the non-NECA LECs' development of exogenous cost changes for NECA long term support is an iterative process which is the last part of the TRP to be finished before final calculation of the new PCI.

[27] Frontier (p. 7) continues, "The second phase -- to be concluded within one year of the tariff filing -- would result in an award of reparations or damages, if required." This phase violates "the 1996 Act's five-month deadline" that Frontier states the mechanism is intended to meet. It also violates the "deemed lawful" provision by apparently recommending retroactive damages. Frontier appears to be mixing pre-effective and post-effective review into one bifurcated process. In response to the Commission's proposed pleading cycle for pre-effective review, Frontier (p. 6) states, "The only recourse is for the Commission to rely principally upon post-effectiveness review with the possibility of damages and sanctions looming large." This argument is without merit. *See* PTG at 17-18.

correct that "[f]or restructures of existing services that cannot be separated into different publications in the same transmittal, a price change should be measured at the basket Actual Price Index (API) level rather than at an individual rate element level to determine whether rates have increased or decreased."

Other subtle attempts to increase the notice period include Ad Hoc's (p. 6) assertion that "the Commission should require that all filings be available for access on-line by 10 am on the day that they are filed." Similarly, MFS (p. 11) states that "the Commission should also consider establishing a filing deadline that is earlier than its traditional 5:30 p.m. EST deadline...." There is no basis for changing the long established practice of requiring filings by the end of the Commission's business day, which retains maximum fairness for parties in all time zones. If Congress had wanted to change this practice, it would have said so. By filing electronically, notice will be provided faster than it is currently and will be efficiently available to all parties.

### 2. *The Commission Should Reject Proposals To Add Burdens And Unreasonable Practices (¶¶25-29)*

Many proposals to move backward attempt to add to the burdens of LEC tariff filings in ways that would reduce the LECs' efficiency and their ability to compete. Ad Hoc (p. 8), AT&T (p. 12), McLeod Telemanagement (p. 5-6), and Time Warner (pp. 8-9) recommend that LECs be required to file detailed summaries, legal analysis, and descriptions of any changes to the tariff and the potential impacts the changes will have on consumers. These proposals would provide unneeded information that would simply give these parties more to argue about in an attempt to continue to use the regulatory process to gain advantages, rather than to compete in the marketplace. As Sprint (pp. 6-7) states, existing requirements are more than sufficient and "[a]ny additional requirements would be redundant and would only add additional burdens on both LECs and Commission staff. Such redundancy and additional burdens are not in keeping with the Congressional intent behind §204(a)(3) to establish a 'deregulatory national policy framework...and...to speed up implementation of LEC tariffs.'" (Sprint quoting *NPRM*, para. 15)

The Commission should reject AT&T's (p. 15) proposal that the Commission "allow three business days for filing petitions, and 1 calendar day for replies, when a LEC tariff is eligible to take effect after 7 days, and allow 7 calendar days for petitions, and 2 calendar days for replies, when a tariff filing will take effect after 15 days." This one-sided approach is unworkable. One day for replies clearly is too short a time. We support the Commission's proposal that "petitions against those LEC tariff filings that are effective within 7 or 15 days of filing must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition." *NPRM*, para. 28.

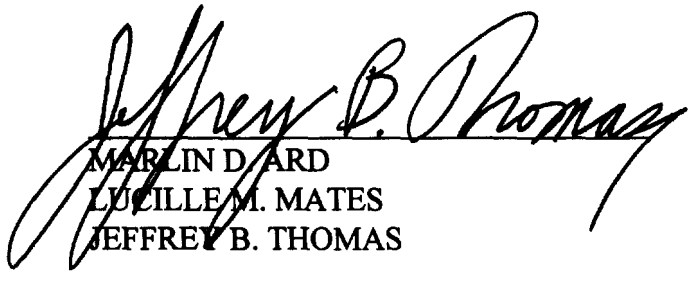
Finally, the Commission should reject MCI's (p. 23) argument that replies should be hand delivered or faxed in order to leave time, in effect, for surreplies. As MCI admits, the Commission's Rules do not allow surreplies. Adding new steps in the tariff process would move backward from Congress's intent to streamline the LEC tariff process.

## V. Conclusion

For the reasons given, we urge the Commission to reject proposals to move backward from streamlining of the LEC tariffing process. The Commission should implement §204(a)(3) as Congress intended in order to achieve its "pro-competitive, deregulatory" goal of bringing more and better services to the American public at lower prices as quickly as possible. Regulations that create unnecessary delays or that are more burdensome than those specifically required in the 1996 Act would be contrary to that goal.

Respectfully submitted,

PACIFIC TELESIS GROUP



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